



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,055	07/23/2003	Khoi Nhu Hoang	6518P002C	1434

7590 06/16/2010  
Daniel M. DeVos  
Blakely, Sokoloff, Taylor & Zafman LLP  
Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025-1030

EXAMINER
----------

LI, SHI K

ART UNIT	PAPER NUMBER
----------	--------------

2613

MAIL DATE	DELIVERY MODE
-----------	---------------

06/16/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/626,055	<b>Applicant(s)</b> HOANG ET AL.	
	<b>Examiner</b> Shi K. Li	<b>Art Unit</b> 2613	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-3,5-11,13-16,18-21,23-27,30-46,49-53,56-60,62-67,69-72,74 and 75.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Shi K. Li/  
Primary Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant describes each of the references used in the rejection of claim 1 and then concludes "Thus, the combination of Golmie, Jukan, and Desnoyers is a QoS service model in the optical domain based on a set of optical parameters that captures the quality and reliability of an optical lightpath (not paths and wavelengths individually), using a messaging system to discover paths between one source-destination pair, and having remote computers discover the electrically switched network topology."

The Applicant then argues "As stated in the Office Action, the Examiner admits that Golmie does not teach or suggest determining service level topologies. (Office Action, Page 3.) Instead, the Examiner relies on Jukan as disclosing this claim element. The Examiner asserts that because Jukan discloses distributed discovery of wavelength paths, the combination of Jukan and Golmie discloses determining service level topologies. Applicant respectfully disagrees. Jukan discloses discovering paths between a single source destination pair for one requested service. However, because Jukan discloses discovering paths for only one service and one service destination pair but not determining service level topologies for multiple service levels, where each service level topology includes end-to-end paths from one source to all reachable destinations, Jukan does not disclose 'determining service level topologies ... said each service level topology comprises end to end paths satisfying the corresponding service level from that access node to all other reachable access nodes in said optical network as destinations.' Therefore, Applicant respectfully submits that the combination of Golmie and Jukan does not teach or suggest this claim element. Furthermore, because Desnoyers does not teach or suggest service levels, Desnoyers cannot teach or suggest the claim element. Thus, the combination of Golmie, Jukan, and Desnoyers does not teach or suggest "determining service level topologies ... said each service level topology comprises end to end paths satisfying the corresponding service level from that access node to all other reachable access nodes in said optical network as destinations" as claimed in claim 1."

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Applicant argues "none of Golmie, Jukan, or Desnoyers discloses any particular structure of a network topology database." The Examiner disagrees. Desnoyers et al. teaches in FIG. 2 network topology database 33. Desnoyers et al. teaches in col. 7, how a message containing end-to-end path information is built..